PATTERNS OF POWER

The Interest of the United States

Words, force, and the ninety-five years between them

1908 — 1965

A case study in the Patterns of Power series

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Held as tested, not revealed

Contents

PART ONE
THE POSITION HOLDS 3

PART TWO
A NEW AUDIENCE 7

PART THREE
A RULING WITHOUT A FLOOR 11

PART FOUR
THE MACHINERY 15

PART FIVE
WHAT ACTUALLY CHANGED 18

PART ONE

THE POSITION HOLDS

What the settlement was worth to the men who held it

The arrangement written into the southern constitutions between 1890 and 1908 was not merely a local one. It was worth a great deal in Washington, and the mechanism by which it paid is the same arithmetic that Part Nine of the preceding study described.

Southern states were apportioned congressional seats and electoral votes on their whole populations, including the third to half of those populations they had disfranchised. A congressman from a Mississippi delta district was elected by a few thousand white voters and represented a district counted at its full size. His seat was safe, because there was one party and the general election was a formality. And a safe seat, in a chamber that allocated committee chairmanships by length of service, compounds.

By the 1930s the consequence was structural. Southern Democrats held a disproportionate share of the chairmanships of both houses, which meant they controlled what reached the floor. The Senate's cloture rule required a supermajority to end debate, which meant that a determined regional bloc could stop legislation the country wanted. And the Democratic party's presidential nominating rules required a two-thirds majority until 1936, which gave the same bloc a veto on the nomination.

A settlement that disfranchised several million people at home converted them, in Washington, into seniority. That is not a by-product. It is what the arrangement produced, and it is why the southern position was defended so tenaciously by men whose own states remained the poorest in the country: the poverty was local and the power was national.

What the power was used for

Two demonstrations, both documented, both decisive for what follows.

The anti-lynching bills. The Dyer bill passed the House in January 1922 and was killed by filibuster in the Senate. The Costigan-Wagner bill was filibustered in 1935 and again in 1938. The Gavagan bill passed the House in 1937 and died the same way. Across the whole period roughly two hundred anti-lynching bills were introduced in Congress, several passed the House, and not one became law. President Roosevelt, asked to support the 1934 bill, explained the position to Walter White of the NAACP: the southerners occupied strategic places on most of the Senate and House committees, and if he came out for the bill they would block every measure he needed to keep America from collapsing.

That is a president describing a veto he has calculated he cannot afford to challenge — the same calculation, at the same institution, that Part Eight of the preceding study found Grant making in 1875. The evidence had never been better. The cost of acting had simply landed in the wrong column again.

The New Deal's exclusions. The programme that built the modern American state was written to pass a Congress the southern bloc controlled, and it shows in the drafting.

The Social Security Act of 1935 excluded agricultural labourers and domestic servants from old-age insurance. The National Labor Relations Act of the same year excluded the same two categories from the right to organise. The Fair Labor Standards Act of 1938 excluded them from the minimum wage and the maximum hour. Nowhere does any of these statutes mention race. Together the two excluded occupations covered something approaching two-thirds of the Black workforce in the country and the overwhelming majority of it in the South.

Historians differ over how much of that drafting was demanded by southern members specifically and how much reflected administrative convenience and the ordinary politics of employer exemptions, and the argument is genuinely unresolved. What is not in dispute is the effect: a national programme of old-age pensions, collective bargaining and wage floors was built with a hole in it exactly the shape of the southern labour force, and the hole was cut with facially neutral language.

That is the instrument the preceding study found in the disfranchising conventions, running at national scale. A statute that does not name a class can exclude it perfectly, provided the drafter knows the occupational distribution — and, crucially, it can do so in language that a court applying the *Williams v. Mississippi* standard will not disturb.

The Federal Housing Administration's underwriting manuals of the same decade did the same work in the same way, using neighbourhood composition as a risk factor and thereby directing federally insured mortgage credit away from Black neighbourhoods for a generation. Again no statute named anyone. Again the effect was total.

The exit, finally working

Against all of that, one thing did change between 1910 and 1940, and it was the one thing the southern order had legislated hardest to prevent.

The preceding study described emigrant agent laws and criminal enticement statutes designed to keep labour in place, and found that they failed because the exit led to a rival economy that would pay the fare. From 1916 that rival economy began paying in earnest. European immigration had been cut off first by war and then, permanently, by the quota acts of 1921 and 1924, and northern industry needed hands. Labour agents went south. The *Chicago Defender* was carried into southern counties by Pullman porters and read aloud in

barbershops and churches.

Something on the order of a million and a half people left the South between 1916 and 1940, and perhaps five million more between 1940 and 1970 — figures that vary by definition and by end date and should be held as magnitudes rather than counts.

Two consequences, and the second is the one that matters for this study.

The first is economic and personal: wages in Chicago, Detroit and Pittsburgh were multiples of southern farm wages, and the men and women who moved were escaping the crop lien and the county sheriff as much as chasing the wage.

The second is political, and it changed the arithmetic of the whole country. A Black southerner who could not vote in Mississippi could vote in Illinois. By the 1930s and 1940s there were concentrations of Black voters in the industrial states of the North — states with large blocks of electoral votes, contested between the parties, where a shift of a few percentage points decided the outcome.

That is a constituency, and it is a constituency inside the coalition that had abandoned the South in 1877. It could not overturn the southern settlement, because the southern bloc held the Senate and the committees. But it altered what a national party had to weigh, and it did so through the ordinary mechanism by which anything in this story ever moved: not by persuading anyone, but by changing what a position was worth.

The first repricing

The evidence that it worked arrived in 1941, and it arrived as a threat rather than an argument.

A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters, announced a march on Washington for 1 July 1941 to demand an end to discrimination in the defence industries and the armed forces. The estimates of expected attendance rose through the spring from ten thousand to a hundred thousand. The administration, then arming for a war it expected to enter, with the world watching and a segregated capital city, tried to have the march called off. Randolph declined unless something was given.

On 25 June 1941 Roosevelt issued Executive Order 8802, declaring it the policy of the United States that there shall be no discrimination in the employment of workers in defence industries or government because of race, creed, colour or national origin, requiring the clause to be written into defence contracts, and establishing a Committee on Fair Employment Practice to receive and investigate complaints.

The march was called off.

It was the first federal action of its kind since Reconstruction, and its origin should be stated exactly. It was not produced by a change of conviction in the presidency, and it was not produced by litigation, and it was not granted. It was extracted, by a man who correctly

identified what a hundred thousand people marching through a segregated capital would cost an administration about to ask the world to take its side in a war about tyranny.

The FEPC that resulted was weak, underfunded, without enforcement power, and killed by Congress in 1946. What it demonstrated was the mechanism. Randolph had not defeated anyone. He had found the one moment when the apex's position made the concession cheaper than the refusal, and he had presented the bill at that moment.

Everything in the following twenty-five years runs on the same principle, at steadily larger scale, before an audience that was about to become the entire world.

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PART TWO

A NEW AUDIENCE

What the war did to the position

The United States that emerged from the Second World War occupied a position no American government had held before, and the position had requirements attached to it.

It was one of two powers of the first rank. It held the largest economy and the only intact industrial base, a nuclear monopoly for four years, and permanent membership of a Security Council in an organisation whose charter it had substantially drafted. And it was engaged, from 1946 onward, in a competition with the Soviet Union that was not primarily military. It was a competition for alignment — over which system the rest of the world would choose, and specifically over which system the parts of the world then leaving European empires would choose.

That last clause is the whole of what follows. Between 1945 and 1965 several dozen new states came into existence out of the British, French, Dutch, Belgian and Portuguese empires. India and Pakistan in 1947; Indonesia in 1949; Ghana in 1957; seventeen African states in 1960 alone. Their populations were not white, their recent experience was of rule by white men who had explained it in racial terms, and their alignment was genuinely contested.

The United States had, for the first time in its history, an audience whose opinion of its internal arrangements carried a material price.

What the audience saw

It saw exactly what was there, and it was told about it continuously by a rival with every incentive to tell it.

Soviet propaganda made American racial practice a standing theme. Lynchings, the Scottsboro case, the exclusion of Black Americans from restaurants, hotels and schools, and the segregation of the capital city itself were reported across the Soviet and Soviet-aligned press and radio, and raised in the United Nations, where the American delegation had to answer them. When the United States criticised Soviet treatment of minorities or Soviet denial of political rights, the reply was available, documented, and required no exaggeration.

And it arrived from friendly quarters too. Diplomats from newly independent African states, accredited to Washington and to the United Nations in New York, were refused service at restaurants along Route 40 in Maryland while driving between the two — an incident type that recurred often enough through the late 1950s and early 1960s to become a standing diplomatic problem and to generate its own State Department office to manage it. A country that cannot feed an ambassador on the road between its capital and the United

Nations has a foreign-policy problem that no amount of aid money resolves.

The letter

The government's own recognition of this is on the record, in writing, and it is the hinge of this study.

In April 1946 Malcolm Ross, chairman of the President's Committee on Fair Employment Practice, wrote to the State Department. The Committee was preparing its final wartime report and wished to say that domestic discrimination affected American international affairs; would the Department care to support the proposition?

The reply, dated 8 May 1946, was signed by Acting Secretary of State Dean Acheson. It stated that the United States was under constant attack in the foreign press, over the foreign radio, and in such international bodies as the United Nations because of various practices of discrimination against minority groups in the country, and that Soviet spokesmen regularly exploited the situation in propaganda against the United States.

The letter was reprinted in *To Secure These Rights*, the report of the President's Committee on Civil Rights, in 1947. It was then used by the Department of Justice in a series of legal briefs.

And in December 1952 the Justice Department filed an amicus brief in *Brown v. Board of Education*. Of the seven pages devoted to what the brief called *the interest of the United States*, five were given to the way school segregation damaged the country in the Cold War competition for the friendship and allegiance of the non-white peoples of countries then gaining independence from colonial rule.

Attorney General McGranery's brief argued that the existence of discrimination against minority groups in the United States had an adverse effect upon relations with other countries; that racial discrimination furnished grist for the Communist propaganda mills; and that it raised doubts even among friendly nations as to the intensity of American devotion to the democratic faith. Acheson, quoted in the brief, added that world attention to American race discrimination was growing in alarming proportions, that school segregation in particular had been singled out for hostile foreign comment, and that the practice remained a source of constant embarrassment to the Government in the day-to-day conduct of its foreign relations and jeopardised the effective maintenance of American moral leadership of the free and democratic nations of the world.

Read that as an instrument rather than as a sentiment and what it says is precise. The executive branch of the United States told the Supreme Court that school segregation was costing the country something it valued, in a currency it could measure, in a competition it was in. It is a document filed by the party with an interest, addressed to the party with the power to act, stating the price.

What had and had not changed

Set that brief beside the constitutional position and the argument of this study becomes visible in a single comparison.

The Fourteenth Amendment in December 1952 read exactly as it had read on 9 July 1868. The Fifteenth read exactly as it had on 3 February 1870. Not a word had been added, removed or amended in eighty-two years. The disfranchising constitutions of 1890 to 1908 had been drafted in the teeth of both and had survived judicial review under both.

What had changed was not the text and not the law. What had changed was that the arrangement had begun to cost the men at the top of it something.

For sixty years the settlement had been free to the national apex. It cost the freedpeople everything and the southern white tenantry a great deal, and neither could present a bill that anyone in Washington had to pay. By 1952 the same settlement was being charged, in a currency the apex cared about, by an audience the apex could not ignore: allied governments, neutral governments, the governments of states whose alignment was in play, and a rival power that raised the matter every time the United States raised anything.

That is the mechanism this study exists to describe, and it should be stated in general form because it is the same one operating at every hinge in both volumes. Words in a constitution do not enforce themselves and are not self-executing in any sense that matters. They acquire force when somebody with force finds it in his interest to supply it. The Fifteenth Amendment had been unenforced not because it was badly drafted but because for three generations nobody with an army needed it enforced. It became enforceable when somebody did.

Truman, and the shape of a repricing

The Truman administration's civil rights record is the best available illustration, because it is simultaneously genuine and instrumental and there is no need to choose between the two.

Truman appointed the President's Committee on Civil Rights in December 1946 and it reported in October 1947. He sent a civil rights programme to Congress in February 1948 which the southern bloc killed. He issued Executive Order 9981 on 26 July 1948, declaring it the policy of the President that there should be equality of treatment and opportunity for all persons in the armed services without regard to race, colour, religion or national origin. The Justice Department began filing the amicus briefs.

The personal element was real: Truman was privately appalled by the blinding of Sergeant Isaac Woodard, a uniformed veteran beaten by police in South Carolina in February 1946 hours after his discharge, and said so.

And every one of those acts was also an act with a foreign-policy rationale that the administration stated in its own documents, in a year in which the Berlin blockade began and the alignment of Western Europe and of the decolonising world was being decided. The armed forces order in particular addressed the institution most visible to the world — an American army stationed across Europe and Asia, segregated, in the name of freedom.

The framework this study runs on declines to adjudicate sincerity, and here is the reason in a single case. It does not matter which motive was uppermost, because both pointed the same way, and the acts are identical either way. What can be established is the position, and the position was that by 1948 an American president had reasons of state to do what no president since Grant had had reasons of state to do.

The southern bloc understood it immediately. When the 1948 Democratic convention adopted a civil rights plank, delegations from Mississippi and Alabama walked out and the States' Rights Democratic party ran Strom Thurmond for president, carrying four states. The faction whose position had depended on the arrangement since 1877 could see that the national party's position had moved, and it did what a faction does when the arrangement stops paying it. It defected.

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PART THREE

A RULING WITHOUT A FLOOR

Brown

The Supreme Court decided *Brown v. Board of Education* on 17 May 1954, unanimously, holding that in the field of public education the doctrine of separate but equal has no place, and that separate educational facilities are inherently unequal.

The opinion does not mention the Cold War. Warren wrote it short and deliberately unquotable in ways that could inflame, and its reasoning rests on the effect of segregation on the hearts and minds of children. Whether the Court decided as it did *because* of the foreign-policy argument is not knowable and this study does not assert it. What is on the record is that the argument was placed before the Court by the executive branch in writing, that the Justices encountered international concern about American racial practice in their own overseas travels, and that the government's brief devoted five of its seven pages on the national interest to precisely this.

What happened next is the point of this part.

The State Department broadcast the decision within an hour, in thirty-five languages, over the Voice of America. Embassies were briefed to publicise it. The ruling was, from the day it issued, an asset in a competition — and it was treated as one by the arm of government whose competition it was.

And in the South, essentially nothing happened for a decade.

The decade of nothing

Brown II, in 1955, remanded the cases to the district courts with the instruction that desegregation proceed with all deliberate speed — a formula that supplied no date and delegated enforcement to the federal district judges of the South, many of them local men. The result was litigation, district by district, school by school, for years.

The southern response was organised and open. In March 1956 ninety-nine members of Congress from eleven states — nineteen senators and eighty representatives — signed the Declaration of Constitutional Principles, generally called the Southern Manifesto. It denounced the decision as a clear abuse of judicial power, commended the states that had declared the intention to resist by lawful means, and pledged its signatories to use all lawful means to bring about a reversal.

State legislatures passed pupil-placement laws, tuition-grant schemes and school-closure statutes. Virginia's massive resistance closed schools rather than integrate them. Citizens' Councils formed across the Deep South and applied economic pressure — foreclosures,

dismissals, withdrawn credit — against anyone who signed a desegregation petition. NAACP branches were subjected to statutes requiring membership lists.

Ten years after *Brown*, in the 1963–64 school year, the proportion of Black students attending desegregated schools in the eleven states of the former Confederacy stood at about one per cent.

One per cent. After a unanimous ruling of the Supreme Court of the United States, broadcast worldwide in thirty-five languages as evidence of the country's character.

That figure is the most useful single number in this volume, and it should be held beside the argument of the preceding one. A judgement is a text. It has the same standing as the Fifteenth Amendment had in 1900, which is to say it states what the law is and supplies nothing whatever to make anyone do it. Between the ruling and the fact there has to be somebody able to compel, and in 1954 nobody had been assigned to compel anything.

Little Rock, and what an exception proves

The exception is instructive precisely because it was an exception.

In September 1957 Governor Orval Faubus ordered the Arkansas National Guard to prevent nine Black students from entering Central High School in Little Rock. After a federal injunction removed the Guard, a mob prevented the students' attendance. On 24 September Eisenhower federalised the Arkansas National Guard and ordered elements of the 101st Airborne Division to Little Rock. Soldiers escorted the students into the school and remained through the year.

Eisenhower had no enthusiasm for the ruling and had declined to endorse it publicly. What moved him was that a state governor had used a state's military force to defy a federal court, which is a question about sovereignty rather than about schools, and — in his address to the nation that evening — that the situation was being exploited abroad. He told the country that the harm to the prestige and influence of the nation was incalculable, and that the misconduct at Little Rock was helping the enemies of American democracy misrepresent the whole nation.

Set that deployment beside the sequence in the preceding volume and the symmetry is exact. In April 1877 the United States Army left the South. In September 1957 it returned — to the same region, over the same constitutional question, under the same commander-in-chief power — and this time it was pointed at the state governments rather than withdrawn from in front of them. Eighty years, one instrument, the object reversed.

But note the scale, because the scale is what makes it an exception. One school, one city, one year, one division sent because a governor had used troops of his own. There were thousands of school districts in the South. The federal government did not garrison them and never intended to, and outside Little Rock the ruling continued to be nullified in the

ordinary way, by delay.

What the movement did

The organised movement of 1955 to 1965 belongs in this part, and its causal role should be stated carefully, because both the sentimental version and the deflationary version are wrong.

The sequence is familiar and needs only to be listed: the Montgomery bus boycott from December 1955, sustained for 381 days by a Black population walking to work; the sit-ins from Greensboro in February 1960; the Freedom Rides of 1961, in which interstate buses were burned in Alabama and riders beaten in Birmingham and Montgomery; the Birmingham campaign of spring 1963; the March on Washington in August 1963 — the march Randolph had threatened in 1941 and called off, held at last, with Randolph on the platform; the Mississippi Freedom Summer of 1964 and the murders at Philadelphia, Mississippi; and Selma in early 1965.

What did that achieve, structurally?

It did not seize any apparatus, and it did not attempt to. The southern state governments were not overthrown, the police forces were not disarmed, and the disfranchising constitutions were not repealed by anyone in the movement.

What it did was make the price visible to the audience that had already been established as the one that mattered.

This is the mechanism, and the movement's leadership understood it precisely. The Birmingham campaign of 1963 was designed around the certainty that Eugene Connor would respond to children marching with fire hoses and dogs, and that the resulting photographs would be carried worldwide. They were. They ran on front pages in Europe, in Africa and in Asia; Soviet media used them extensively; and within weeks the Kennedy administration, which had spent two years urging the movement to slow down, sent a civil rights bill to Congress.

Kennedy's televised address of 11 June 1963 is the administration stating the ledger out loud. He asked whether the country was going to say to the world, and much more importantly to each other, that this is a land of the free except for the Negroes; and he told the country that the United States would not be fully free until all its citizens were free — with the international framing first.

That is a repricing, and a repricing is real power. A movement that can reliably convert an act of local repression into a global cost has acquired a lever on the calculations of men who hold force, and can pull it. It cannot write the legislation, cannot enforce it, and cannot make anyone want to. It can make the alternative more expensive, which is precisely what happened between 1961 and 1965.

But hold the distinction the whole of both volumes turns on. The movement changed the price. It did not change the position. The position had already changed — in 1945, when the country acquired a world audience, and through the 1950s as decolonisation multiplied the states whose alignment was in play. What the movement did was present the bill to a party that had, for the first time since 1877, a reason to pay it.

Neither half of that sentence should be dropped. Without the changed position, Birmingham would have been Colfax: photographed, reported, filed, and answered by nobody, exactly as Ida B. Wells's evidence had been. Without the movement, the changed position would have produced what it produced between 1946 and 1963 — briefs, executive orders, a ruling, and one per cent.

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PART FOUR

THE MACHINERY

Two statutes, and why the second one worked

The Civil Rights Act was signed on 2 July 1964 and the Voting Rights Act on 6 August 1965. They are usually spoken of together. Structurally they are different kinds of instrument, and the difference is the entire subject of this study.

The Civil Rights Act of 1964 prohibited discrimination in public accommodations and employment, authorised the Attorney General to sue to desegregate schools and public facilities, and — in the provision that did most of the work — allowed federal funds to be withheld from any programme that discriminated.

That last clause is the one that broke the schools, and it broke them because it attached the prohibition to a payment. Between 1964 and 1968 the proportion of Black students in desegregated schools in the eleven southern states went from about two per cent to something over thirty per cent, and by the early 1970s the South was, by the measure then used, the least segregated region in the country in its schools. A decade of *all deliberate speed* had produced one per cent; four years of a funding condition administered by a federal department produced a transformation.

No new right had been created. The right had been declared in 1954 and had rested in the Fourteenth Amendment since 1868. What 1964 added was an official with a cheque and the authority to stop writing it.

The Voting Rights Act of 1965 went further, and it is the more instructive document, because it is a floor written as a statute.

Consider what the Fifteenth Amendment had said since 1870: that the right of citizens to vote shall not be denied or abridged on account of race. A prohibition, addressed to nobody in particular, enforced by lawsuits that had to be brought one county at a time against registrars who could invent a new obstacle faster than a court could strike down the old one — which is exactly what had happened for ninety-five years.

The 1965 Act did not restate the prohibition. It supplied an apparatus.

Section 4 established a coverage formula, keyed to the use of a literacy test or similar device together with turnout below fifty per cent in 1964, which captured most of the Deep South automatically without naming a state. It suspended those tests outright in the covered jurisdictions.

Section 6 authorised the Attorney General to send federal examiners into covered counties to register voters directly, on federal authority, bypassing the local registrar entirely.

Section 8 authorised federal observers at the polls.

And Section 5 required covered jurisdictions to obtain preclearance — approval from the Attorney General or from a federal court in Washington — before changing any voting practice at all. That provision is the one that solved the problem the previous ninety-five years had exposed. It reversed the burden. A jurisdiction could no longer invent a new device and wait to be sued; it had to obtain permission before the device could operate.

Set the 1965 Act beside Section 2 of the Fourteenth Amendment and the comparison is the argument of both volumes in one page.

Section 2 was drafted in 1866 as a penalty for disfranchisement, and it was elegant: exclude a tenth of your electorate and lose a tenth of your seats. It has never once been applied, because it required the penalised states to supply the evidence and required a chamber containing them to impose it.

Section 5 was drafted in 1965 to do a comparable job, and it worked for nearly fifty years, because it required nothing of the penalised state except permission, put the machinery in the hands of officials in Washington who had an interest in operating it, and — this is the part Section 2 lacked — was backed by a government that at that moment wanted it operated.

The difference between a right and a floor is an official with the power to act and a reason to use it. Everything else is drafting.

Selma, and the cost being presented

The Act's passage should be dated to the events that made refusing it more expensive than passing it, and the sequence is short.

The Selma voting rights campaign began in January 1965 in a county where Black residents were a majority of the population and about two per cent of the registered voters. On 7 March marchers crossing the Edmund Pettus Bridge were attacked by state troopers and a county posse with clubs and tear gas. ABC interrupted its Sunday film — *Judgment at Nuremberg* — to broadcast footage of the beatings to a national audience of tens of millions.

Eight days later, on 15 March, President Johnson addressed a joint session of Congress, called the events at Selma a turning point in man's unending search for freedom, said that the cause of the American Negro must be the cause of all Americans, and closed by adopting the movement's own anthem: *and we shall overcome*.

The bill was introduced two days later and signed on 6 August.

That is a repricing performed under a camera, and it is the clearest instance in either volume. Nobody in Alabama had been outvoted, outfought or overthrown. What happened is that a local exercise of force, of exactly the kind that had gone unanswered for eighty years, was converted into a national and international cost in a single afternoon — and a president who had already decided which way his interest ran used it.

What the numbers did

The effect of an apparatus, as against a declaration, is measurable and the measurement is stark.

In Mississippi, Black voter registration stood at about 6.7 per cent of the voting-age Black population in 1964. Within a few years of the Act it was around 59 to 60 per cent. Across the covered states the increases were of the same order and they arrived within two or three years, in some counties within months of federal examiners arriving.

Ninety-five years of the Fifteenth Amendment had produced 6.7 per cent. Three years of federal examiners produced sixty.

The Amendment had not changed. The Constitution of the United States in 1968 contained precisely the words it had contained in 1870. What arrived in 1965 was a body of federal officers with authority to register voters over the heads of the men who had been refusing to, and a government that wanted them to do it.

Force, again, and where it came from

Two further things belong here because they close the loop with the preceding volume.

First, the force was federal, and it was the same institution. Federal examiners, federal observers, federal marshals, the federalised Guard at Little Rock in 1957 and at Tuscaloosa in 1963, the 101st Airborne, the regular army units deployed to protect the Selma-to-Montgomery march after Johnson federalised the Alabama Guard on 20 March 1965. The instrument that laid the floor on the South in 1867, that was withdrawn from it in 1877, that was pointed west through the 1870s and at Pittsburgh in July 1877, was pointed at the southern states again in the 1950s and 1960s.

Nothing about the instrument changed across ninety years. What changed each time was whose position required it and against whom — which is the proposition both volumes exist to demonstrate, and it is demonstrable here because the institution is literally the same one.

Second, the southern bloc's veto had to be broken, and it was broken by arithmetic. The Civil Rights Act cleared a filibuster of fifty-seven working days — the longest in Senate history to that point — on a cloture vote of 71 to 29 on 10 June 1964, the first time cloture had ever been invoked on a civil rights measure. That was possible because the Democratic landslide of 1964 and the changed composition of both parties had at last produced the votes, and because the Republican leadership under Dirksen supplied them.

The bloc that had killed two hundred anti-lynching bills lost, for the first time, on the floor. It lost when the coalition around it had been rebuilt by fifty years of migration, twenty years of Cold War, and one televised afternoon on a bridge.

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PART FIVE

WHAT ACTUALLY CHANGED

The three dates

Put the three moments of this arrangement's life beside one another and the mechanism is legible without any argument at all.

1868–70. Three amendments are written. They make citizenship national, guarantee due process and equal protection, and prohibit racial denial of the vote. They are written by a faction — the Radical Republicans — that needs southern Republican votes against a restored Democratic South whose representation has just been enlarged by emancipation. They are enforced for about six years, against an actual counter-organisation, by an army, in the only period when the governing coalition's position required it.

1877–1965. The words remain, unamended. The floor is withdrawn, for reasons of cost, and the Supreme Court removes the enforcement machinery in a coherent line of decisions between 1873 and 1903. Seven state constitutions are written between 1890 and 1908 to nullify the amendments by means their words do not reach. Section 2's penalty is never once applied. Two hundred anti-lynching bills fail. The evidence is public throughout, printed, uncontested and in some cases published by the government itself.

1946–65. The words still remain, still unamended. The country acquires an audience whose alignment it needs and whose price it must pay. Its own Secretary of State informs the President's Committee, in writing, that the arrangement is costing the country abroad. Its Justice Department places that letter before the Supreme Court. A ruling issues, is broadcast in thirty-five languages, and produces one per cent compliance in ten years. Then two statutes supply what the amendments never had — a payment that can be withheld, an examiner who can register, an observer who can watch, and a requirement that a state ask permission before it changes anything — and the position moves in three years further than it had moved in ninety-five.

The text is constant across all of it. The only variable is whether somebody with force found it in his interest to supply it.

Stating the finding

A right is a claim. A floor is an apparatus. The two are not the same thing and a constitution can contain the first for a century without producing the second.

The Fifteenth Amendment did not fail because it was badly drafted, or because the courts were sophistical, or because the country had not yet developed morally. It failed because between 1877 and 1965 no faction with organised force needed it enforced, and it succeeded

when one did. In the same way, it did not succeed in 1965 because anybody's mind had changed. Minds had changed, of course, in large numbers and often at great cost. But minds had also changed in 1868, when the amendments were written by men who meant them, and the arrangement had swallowed those minds whole.

What was different in 1965 was that the apex of the American hierarchy occupied a position in which the settlement's continuation was expensive, and it was expensive in a currency the apex had never previously been charged in.

This is the same proposition the preceding volume established at each of its hinges, and the reader will recognise the pattern. In 1787 three orders signed a treaty because each was in a position from which it paid. In 1860 one of them lost a veto and stopped defending it. In 1865 a victorious coalition restored a defeated elite because it wanted the war over and the cotton moving. In 1877 it withdrew because the annual bill exceeded the annual return. In 1890 a settlement was written into constitutions by men who said out loud that they were doing it within the limits imposed by the Federal Constitution. And in 1965 the same instruments that had been available the whole time were finally used, by a government that had at last acquired a reason.

Nobody in this story ever did anything against their position. That is not a cynical observation. It is a description of what positions are.

Where the movement sits

The place of the movement in this account should be stated fully and without deflation, because it is the point on which a structural reading is most easily made to look like a dismissal, and it is not one.

What the movement did was real, was difficult, was mortally dangerous, and was decisive to the timing and to the content of what passed. It took the price the arrangement was already costing the country abroad and made it undeniable, repeatedly, on camera, in a form no embassy could explain away. It selected its confrontations with an accurate understanding of which sheriffs would supply the images. It sustained a boycott for 381 days in a city where the participants walked to work. It put people on buses through Alabama knowing what was waiting. It produced, in Montgomery and Birmingham and Selma, exactly the evidence its opponents most needed suppressed, and it produced it on schedule.

And it did that at a cost paid in the ordinary currency: Medgar Evers in his driveway in 1963, the four girls at the Sixteenth Street Baptist Church that September, Chaney, Goodman and Schwerner in Mississippi in 1964, Jimmie Lee Jackson and James Reeb and Viola Liuzzo around Selma in 1965, and a very large number of people whose names are not in the textbooks and who lost jobs, credit, houses and lives.

What it did not do — because it could not, and because no comparable movement anywhere in the record ever has — was overturn the settlement by its own force. It had none. Structural change in an order with a functioning state comes from the hierarchy, and it came from the hierarchy here.

The honest formulation is that the movement authored the timing and the terms and did not author the change, and that authoring the timing and the terms is a very great deal — because the position had been available to be acted on since 1946, and for nineteen years it produced briefs, orders, a ruling and one per cent. Somebody had to present the bill. Presenting it took ten years and cost lives, and the men who eventually paid it did so on a calculation the movement had made unavoidable.

The strongest counter-position

Stated in its own voice.

This reading is a machine for explaining away moral achievement. You have taken the most admirable episode in the country's history — a mass movement of the powerless, conducted with extraordinary discipline and courage, which changed the law of a great nation without a war — and rendered it as a marketing operation that made a nuisance of itself until an elite paid to be rid of it. That is not analysis. It is a habit of mind that refuses to let anything be what it appears to be.

And it is empirically weak in three places. First, the Cold War thesis is contested: historians have argued that it explains rhetoric better than outcomes, that the Soviet Union was equally embarrassing on its own account, and that the administrations which acted did so under intense domestic pressure with electoral consequences they could count. Second, you cannot separate the position from the movement in the way your argument requires, because the movement was one of the things that changed the position — the migration that built the northern Black electorate was made by the same people, one household at a time. Third, your own account concedes that words written in 1868 by men acting on a factional interest turned out ninety years later to be the instrument. If a legal text can outlive every interest that produced it and then be picked up by people its drafters never imagined, then texts are not merely downstream of force, and your central proposition is too strong.

The answer

The third objection is correct and this study accepts it. Words written down do outlive the interests that wrote them, and the fact that they can be picked up later by parties the drafters never envisaged is the single strongest argument for writing them down. The Fifteenth Amendment was unenforceable for ninety-five years and then it was the ground on which the 1965 Act was built. A reading of this history that concludes there is no point in constitutional guarantees has drawn the wrong lesson from it, and this study says the opposite: the guarantee is a standing option that becomes exercisable the moment somebody with force wants to exercise it, and it cannot be exercised if it was never written.

The second objection is also largely correct and improves the account rather than damaging it. The migration was made by individuals and it built the northern electorate, and that electorate was one of the things that moved the national party's position. The line between the movement and the position is not clean, and this study should not have implied it was. What survives is the ordering: the audience that made the arrangement expensive was created by the war and by decolonisation, neither of which any American movement produced, and the domestic constituency was itself built by an exit that worked because northern industry wanted the labour.

The first objection is a live historiographical dispute and this study does not claim to settle it. The Cold War argument, associated principally with Mary Dudziak, is contested, and the honest position is that the foreign-policy consideration is documented in the government's own filings and cannot have been trivial, while the domestic electoral calculus was operating at the same time and was also documented. Both are positions. Neither is a change of heart.

Which leaves the first sentence of the objection, and it deserves a direct answer.

This study does not hold that the movement was a nuisance operation and does not hold that courage is a marketing strategy. It holds that courage is not a mechanism. People have acted with enormous bravery against every order in this collection, and in almost every case they were killed and nothing changed, because bravery is not a lever unless it is attached to somebody's ledger. What distinguishes 1965 from 1892 is not that the people of 1965 were braver than Ida B. Wells. It is that in 1965 there was somebody for whom the bill, once presented, had become worth paying.

That is not a smaller achievement than the sentimental version. It is a more difficult one, and it required the movement to understand its own position with a precision the sentimental version denies it. Randolph in 1941 knew exactly what a hundred thousand marchers would cost an administration arming for a war about tyranny, and he named his price and took it. The men and women who chose Birmingham in 1963 knew what Connor would do and what the photographs would be worth. They were not appealing to a conscience. They were reading a ledger, and they read it correctly.

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A note on sources. Acheson's letter of 8 May 1946 to Malcolm Ross of the Fair Employment Practice Committee is in the State Department's central decimal file and is described in the National Archives' own account; it was reprinted in To Secure These Rights (1947) and quoted in the Justice Department's amicus brief in Brown v. Board of Education, filed December 1952, from which the phrases quoted here are taken. The brief's allocation of five of seven pages on the national interest to Cold War considerations, and Attorney General McGranery's language about propaganda mills, are as reported in the scholarship on the case, principally Mary Dudziak's, whose Cold War thesis is influential and contested and is presented here as a position rather than a settled finding. Executive Orders 8802 and 9981, the Southern Manifesto, the Civil Rights Act of 1964 and the Voting Rights Act of 1965 are quoted or described from their texts. Desegregation percentages for southern schools, Mississippi registration figures before and after 1965, migration totals, and the length of the 1964 filibuster are given as reported in the standard literature and vary by definition and end date; they are given as magnitudes. Roosevelt's remark to Walter White is quoted as White reported it. Kennedy's address of 11 June 1963 and Johnson's of 15 March 1965 are from their delivered texts. Where a widely repeated figure could not be pinned to a single authority it is given as a range or omitted. --- Part of the collection Patterns of Power. *Tested, never revealed.*